IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA BRUNSWICK DIVISION

SHARMILA MELISSA POWELL,

Petitioner,

V.

CIVIL ACTION NO.: CV212-202

BELINDA DAVIS, Warden,

Respondent.

ORDER

After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In her Objections, Petitioner Sharmila Powell ("Powell") asserts that a court should not require a petitioner to exhaust her state remedies if the petitioner shows that the state process is ineffective to protect the petitioner's rights. As the Magistrate Judge noted, that is a correct statement of the law. However, Powell fails to show that the state process has been ineffective in this case. The Court notes that Powell's motion for a new trial has been pending in the state court for more than four (4) years. A hearing was to be held on this motion on April 26, 2013, (Doc. No. 29), and a ruling on this motion should be forthcoming relatively soon. Powell can then continue to exhaust her state remedies before filing another 28 U.S.C. § 2254 petition in federal court.

Powell's Objections are overruled. The Magistrate Judge's Report and Recommendation is adopted as the opinion of the Court. Respondent's Motion to Dismiss is GRANTED. Powell's petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, is DISMISSED, without prejudice. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this $\underline{\psi}$ day of $\underline{}$

LISA GODBEY WOOD, CHIEF JUDGE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF GEORGIA